UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

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Stonyfield Farm, Inc.
10 Burton Drive
Londonderry, NH 03053
Plaintiff,

v.

Agro-Farma, Inc.
669 County Road #25
New Berlin, NY 13411
Defendant,

****

Civil Action No. ______________

COMPLAINT

Plaintiff, Stonyfield Farms, Inc. ("Stonyfield"), by and through its attorneys, Sheehan, Phinney, Bass + Green, P.A., and complains against Defendant Agro-Farma, Inc. ("Agro-Farma") alleging as follows:

NATURE OF COMPLAINT

1. This is an action for breach of warranty, breach of contract, violation of the New Hampshire Consumer Protection Act (RSA 358-A) and arising from the parties' over two year business relationship related to the manufacturer by Agro-Farma of Greek yogurt for Stonyfield.

PARTIES, JURISDICTION, AND VENUE

2. Stonyfield is a Delaware corporation with a principal place of business at 10 Burton Drive, Londonderry, New Hampshire 03053.

3. Agro-Farma is a New York corporation with a principal place of business at 669 County Road #25, New Berlin, New York 13411.

4. This Court may properly assert *in personam* jurisdiction over Agro-Farma because, among other things, Agro-Farma has traveled to New Hampshire, made payments to Stonyfield in New Hampshire, and its agents have initiated multiple telephonic, email and written communications with Stonyfield in New Hampshire, all in connection with the parties' over two year business relationship which gives rise to this litigation.

5. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1).

6. Venue is proper in this Court because a substantial part of the events giving rise to the claim occurred in New Hampshire. 28 U.S.C. § 1391 (a)(2).

BACKGROUND FACTS

7. Stonyfield is engaged in the manufacture and distribution of organic dairy products throughout the United States.

8. In addition to manufacturing its own products, Stonyfield enters into co-packing agreements with various manufacturers for the manufacture of products sold by Stonyfield to its customers.

9. Agro-Farma is a manufacturer and seller of dairy products, and like Stonyfield is a merchant, within the meaning of RSA 383-A:2-104(1), with respect to the manufacture and sale of yogurt.

10. Stonyfield and Agro-Farma sell yogurt to many of the same customers.

11. Beginning in March 2006, Stonyfield entered into discussions with Agro-Farma about a co-packing agreement for the manufacture of non-fat yogurt at Agro-Farma's New Berlin, New York facility. In connection with those discussions, Stonyfield requested and Agro-Farma agreed to a non-disclosure agreement containing a New Hampshire governing law provision.

12. By late April 2006, Stonyfield research and development and quality control personnel had visited Agro-Farma for a research and development/quality control assessment qualification of Agro-Farma's New Berlin facility for the manufacture for non-fat yogurt.

13. In May 2006, Stonyfield research and development and quality control personnel conducted trials at Agro-Farma which were successful and lead to discussions regarding the commercial manufacture by Agro-Farma of Stonyfield non-fat yogurt.

14. By mid-May 2006, Stonyfield had learned that Agro-Farma had the potential capability to manufacture Greek yogurt, a product which Stonyfield was interested in providing to consumers.

15. Greek yogurt is yogurt that is strained to remove the whey, resulting in a creamier product richer in protein and lower in lactose.

16. Stonyfield communicated with Agro-Farma, through its President and owner, Hamdi Ulukay ("Ulukay"), concerning Agro-Farma's willingness to co-pack Greek yogurt for Stonyfield. Ulukay agreed to proceed with co-packing of the Greek yogurt for Stonyfield provided that Stonyfield made only organic and Agro-Farma made only all natural Greek yogurt. At the time Agro-Farma was not manufacturing Greek yogurt of any kind.

17. Ulukay's confirmation of Agro-Farma's willingness to co-pack organic Greek yogurt for Stonyfield lead to further discussions between and among the companies. The companies discussed an approximate 8 to 10 month period to implement the necessary manufacturing process for Greek yogurt.

18. During this period, Stonyfield and Agro-Farma continued discussions towards an agreement for co-packing non-fat yogurt.

19. By July 1, 2006, Agro-Farma and Stonyfield reached a comprehensive agreement concerning the manufacture of non-fat yogurt which contained a New Hampshire governing law and forum selection clause.

20. By September 2006, Agro-Farma provided Stonyfield research and development personnel with the first samples of Greek yogurt.

21. By mid-October, 2006, Stonyfield research and development personnel met further with Agro-Farma to discuss the co-packing of organic Greek yogurt. In connection with those discussions, Stonyfield provided Agro-Farm with the technical specification parameters it required for the production of organic Greek yogurt for Stonyfield. The information supplied by Stonyfield included the details for the Stonyfield product, processing and quality requirements and certain know how.

22. In December 2006, Stonyfield's research and development personnel ran several trials for process systems and formulations to assess the suitability of existing manufacturing equipment and to identify new equipment and processes required to be able to manufacture an improved organic Greek yogurt product for Stonyfield. Among other things, Stonyfield provided most of the design and process for the cooling system for the manufacturing by Agro-Farma of Greek yogurt for Stonyfield.

23. Stonyfield also communicated with personnel from Quality Assurance International – the USDA representative for organic certification and qualification – concerning expediting Stonyfield's pending organic certification application for Greek yogurt.

24. In anticipation of a May 2007 launch of Stonyfield's organic Greek yogurt product, communications continued between Stonyfield and Agro-Farma about a comprehensive written agreement concerning pricing, capacity requirements and other issues.

25. In addition, Stonyfield research and development personnel confirmed with Ulukay a list of revised and improved processing and cooling equipment parameters developed by Stonyfield for the manufacture by Agro-Farma of organic Greek yogurt for Stonyfield.

26. In May 2007, Agro-Farma began the first commercial production of Oikos Greek yogurt for Stonyfield. Oikos is Stonyfield's trade name for its organic Greek yogurt.

27. After the launch of Stonyfield's Oikos Greek yogurt product, Agro-Farma began the sale of its own all natural Greek yogurt. Agro-Farma sells it own all natural Greek yogurt, sold under the product name "Chobani", to many of Stonyfield's customers.

28. In July 2007, in connection with its efforts to arrive at a comprehensive written agreement with Agro-Farma reflecting the companies' agreement for the manufacture of Oikos Greek yogurt, Stonyfield forwarded written technical specifications to Agro-Farma.

29. In August 2007, Agro-Farma invoiced Stonyfield for its prior production of Oikos Greek yogurt at significantly higher co-pack fees than had previously been discussed. In turn, Stonyfield paid Agro-Farma for those deliveries of Greek yogurt.

30. On October 1, 2007, Agro-Farma agreed in writing to a lower co-pack fee and other terms for the manufacture of both small and large cup Oikos Greek yogurt for Stonyfield.

31. Throughout the end of calendar year 2007 and the first half of calendar year 2008, Stonyfield and Agro-Farma continued to communicate about terms and conditions for a comprehensive written agreement governing the co-packing of Oikos Greek yogurt for Stonyfield by Agro-Farma. The parties exchanged various drafts and proposed letters of intent and communicated concerning pricing and other terms.

32. Throughout this period, Agro-Farma continued to co-pack Oikos Greek yogurt for Stonyfield based upon forecasts supplied by Stonyfield and based on the prices and other terms agreed to by the companies in October 2007.

33. By June 2008, Stonyfield and Agro-Farma began to discuss plans for a wind down of their co-packing agreement for Greek yogurt if a comprehensive written agreement could not be achieved.

34. Agro-Farma, through Ulukay, proposed a wind down of a maximum of twelve (12) months during which Agro-Farma would continue to co-pack Oikos Greek yogurt for Stonyfield.

35. By July 28, 2008, Agro-Farma had revised its position concerning the length of the wind down period from twelve months to a period not to exceed the end of March 2009, a roughly eight month period.

36. Throughout this period and through October 15, 2008, Agro-Farma continued to manufacture Oikos Greek yogurt for Stonyfield pursuant to price, delivery and other terms agreed upon from time to time.

37. On or about October 15, 2008, Agro-Farma insisted upon new payment terms, which, among other things, included invoicing Stonyfield for all raw material inventory (including cups, lids, foils and fruit) which Agro-Farma had on hand.

38. Stonyfield paid Agro-Farma for all inventory on hand, netting out balances owed by Agro-Farma to Stonyfield, consistent with the past course of dealing between the parties.

39. By invoicing Stonyfield for the inventory it held and accepting payment for the same, Agro-Farma impliedly represented to Stonyfield and agreed, consistent with the parties' course of performance, that it would continue to co-pack Oikos Greek yogurt for Stonyfield at least until the remaining inventory was exhausted.

40. On October 29, 2008, by Invoice No. AF2839, and on November 6, 2008, by Invoice No. AF2887, Agro-Farma invoiced Stonyfield for Oikos Greek yogurt manufactured and shipped by Agro-Farma pursuant to the parties' agreement.

41. Substantial quantities of the Oikos Greek yogurt sold by Agro-Farma to Stonyfield were defective and failed to conform to the requirements of the parties' agreement, by among other things, failing to conform to the pH requirements. Stonyfield notified its customers and consistent with industry practices most of this defective product was destroyed by those customers.

42. On November 7, 2008, Stonyfield provided Agro-Farma with notice of its delivery of non-conforming yogurt. The non-conforming nature of these goods has been established by independent third party testing.

43. On November 17, 2008, Agro-Farma notified Stonyfield that it would no longer co-pack Oikos Greek yogurt for Stonyfield effective immediately.

44. The packaging material for the Oikos Greek yogurt held by Agro-Farma and invoiced by Agro-Farma to Stonyfield and paid for by Stonyfield is not compatible with Stonyfield's manufacturing equipment.

45. At the time Agro-Farma notified Stonyfield of its refusal to continue the manufacture of Oikos Greek yogurt, Agro-Farma had on hand an inventory of cups, lids and other materials purchased and paid for by Stonyfield sufficient to manufacture approximately 237,000 cases of Oikos Greek yogurt.

COUNT I
(Breach of Warranty)
RSA 382-A:2-313 and 314

46. The allegations of the preceding paragraphs are incorporated herein by reference.

47. Stonyfield and Agro-Farma are merchants within the meaning of RSA 382-A:2-104(1) with respect to Greek yogurt.

48. Stonyfield and Agro-Farma entered a contract for the manufacture of Oikos Greek yogurt under which Agro-Farma agreed to manufacture the goods pursuant to Stonyfield's specifications.

49. Agro-Farma impliedly warranted that the Oikos Greek yogurt manufactured by it for Stonyfield would be merchantable and fit for its intended purpose.

50. In breach of Agro-Farma's express and implied warranties, substantial quantities of Oikos Greek yogurt sold by Agro-Farma to Stonyfield failed to conform to the requirements of the contract and were not merchantable within the meaning of RSA 382-A:2-314(2).

51. On November 7, 2008, Stonyfield provided notice to Agro-Farma of its breach of warranty to Kevin Bucklyn, Agro-Farma's Vice President of Operations. This notice was confirmed in writing on November 24, 2008.

52. Stonyfield has suffered damages as a result of Agro-Farma's breach of warranty including cover, incidental and consequential damages.

53. Stonyfield has suffered lost profits of approximately $180,000.00.

COUNT II
(Breach of Contract)
RSA 382-A:2-610

54. The allegations of the preceding paragraphs are incorporated herein by reference.

55. Agro-Farma entered an agreement with Stonyfield to specially manufacture Oikos Greek yogurt to Stonyfield's specifications through the exhaustion of Stonyfield's purchased inventory held by Agro-Farma or alternatively through at least March 2009.

56. Agro-Farma owed Stonyfield a duty of good faith. RSA 382-A:1-203.

57. In breach of its contract with Stonyfield, including its duty of good faith, Agro-Farma notified Stonyfield on November 17, 2008 that it would no longer manufacture Oikos Greek yogurt for Stonyfield, including a refusal to manufacture the

remaining inventory on hand previously invoiced by Agro-Farma and paid for by Stonyfield.

58. Agro-Farma's termination of the agreement constitutes a breach of contract.

59. Stonyfield has been damaged as a result of Agro-Farma's breach of contract, including lost profits, incidental and consequential damages, including damage to its brand.

60. Stonyfield's damages include lost profits on the sale of the inventory in excess of $1,168,000 and consequential damages to its brand, including lost sales of roughly $5,300,000 and slotting, advertising and other costs associated with mitigating the damage to its brand totaling in excess of $1,200,000.00.

COUNT III
(Violation of the New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. 358-A)

61. The allegations of the preceding paragraphs are incorporated herein by reference.

62. Agro-Farma is a "person" as that term is defined under the New Hampshire Consumer Protection Act.

63. Agro-Farma used unfair methods of competition against the Plaintiffs by, among other things: (a) representing that the yogurt it sold to Stonyfield was of a particular quality when it was not; (b) by engaging in a series of intentional acts intended to undermine and disrupt the agreement, including the disruption of Stonyfield's supply; (c) disparaging Stonyfield's Oikos Greek yogurt product to its customers by, among other

things, describing Stonyfield's organic Greek yogurt as fundamentally equivalent to Agro-Farma's all natural Greek yogurt and (d) disparaging Stonyfield to its customers.

64. Agro-Farma's acts occurred in "trade or commerce" as that term is defined by the New Hampshire Consumer Protection Act and interpretive case law.

65. Stonyfield has been damaged by Agro-Farma's acts in an amount to be determined at trial. Agro-Farma's acts were willful or at least reckless, subjecting it to multiple damages under the Act. See N.H. Rev. Stat. Ann. 358-A:10.

66. Stonyfield is entitled to its attorneys' fees and costs of bringing the suit pursuant to RSA 358-A:10.

WHEREFORE, Stonyfield prays that following trial this Court:

A. Issue judgment in Stonyfield's favor in an amount to be provided at trial;

B. Double or treble Stonyfield's damages as proved at trial;

C. Award Stonyfield its reasonable attorneys' fees and costs; and

D. Provide Stonyfield such other and further relief as may be just and equitable.

JURY DEMAND

Stonyfield hereby demands a trial by jury.

Respectfully submitted,

STONYFIELD FARM, INC.

By its attorneys,

SHEEHAN PHINNEY BASS + GREEN, PROFESSIONAL ASSOCIATION

Date: November 25, 2008

By: /s/ *Peter S. Cowan*

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